THE HON'BLE SRI JUSTICE C.V. RAMULU

Tuesday, 13th June, 2006

W.P.No.7009 of 2006

Between:-

Challa Sujeevanamma … Petitioner

And

The Deputy Registrar of Cooperative

Societies, Gudur, Nellore district. … Respondent

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.7009 of 2006

O R D E R:

This Writ Petition is filed seeking a Mandamus declaring the Proceedings Rc.No.1109/2003-B, dated 9-3-2006 and the consequential action of the 1st

respondent under Section 60 of the Andhra Pradesh Cooperative Societies Act,1964 (for short 'the Act') as arbitrary, illegal and without jurisdiction and consequently to set aside the proceedings in E.P.No.1186/2000-01 against the property of the petitioner.

It seems, husband of the petitioner was the Secretary of the Primary Agricultural Cooperative Society, Pedaparia, Nellore district. Surcharge proceedings initiated against the husband of the petitioner were concluded as per law. When the Order passed under Section 60 of the Act was sought to be executed, the property, which is lying in the name of the petitioner, the wife of the employee (Ramanaiah), was sought to be attached. Therefore, she filed a claim petition before the 1st respondent-Deputy Registrar of Cooperative Societies, Gudur, Nellore District stating that the property sought to be attached and sold is her own property, which she had obtained from her parents towards 'pasupu kumkuma' at the time of her marriage, which took place in the year 1986. Her parents purchased an extent of 8 Ankanams of vacant site at Chillakuru village in her name under a registered sale deed dated 25-7-1987 vide document No.951/87 and another extent of 24 Ankanams of vacant site under another registered sale deed, vide document No.1091/87, for a consideration of Rs.1,600/- and Rs.6,800/- respectively. These two properties stand in the name of the petitioner. She is a B.Com. Graduate and conducted a Convent in the year 1987 at Chillakuru and earned Rs.4,000/- to Rs.5,000/- per month. In the year 1993, she constructed a house in both the sites by borrowing amounts from third parties. She has been in possession of the houses as an absolute owner. At no point of time, her husband had contributed for the purchase of the sites or construction of the houses. The notice in Form No.6 issued under Rule 52(ii)(b) of the A.P. Cooperative Societies Rules (for short 'the Rules) for conducting sale of the aforementioned property of the petitioner on the ground that surcharge Order was made against her husband, who worked as Paid Secretary and for realization of the amount under the said surcharge proceedings, is arbitrary and illegal. The surcharge order was issued against the husband of the petitioner on the allegation of misappropriation of amounts during his period of office in Pedaparia PACS. In fact, even according to the respondents, the husband of the petitioner joined the said society only in the year 1990 and much prior to that she purchased the said sites; therefore, the proceedings may be dropped against her. It is also stated that the 2nd respondent has no jurisdiction to exercise the power of Registrar

under Section 70 of the Act. The surcharge order and other decrees issued under Section 60 of the Act can be executed only under Section 70 of the Act. Government issued a notification under Section 3 of the Act delegating and conferring powers of the Registrar on various authorities. No such power is conferred on the 1st respondent. Thus, the 1st respondent-Deputy Registrar of Cooperative Societies, who issued the notice, has no power whatsoever. Therefore, the impugned Order is liable to be set aside.

Per contra, though no counter affidavit is filed, learned Government Pleader appearing for the respondents, strenuously contended that the 1st respondent has all the powers as per Section 60 of the Act read with Sub-Rule (21) of Rule 52 of the Rules. Apart from that, the impugned Order is also appealable. Further, he contended that the 1st respondent has power to enquire into whether the property held by the petitioner is devolved upon her from the property of her husband or not. Therefore, he had conducted an enquiry and passed the impugned Order giving a finding that the property held by the petitioner is the property earned and purchased in the name of the wife of the employee i.e. petitioner herein. As such, no illegality or irregularity has been committed by the 1st respondent, muchless it can be said that the 1st respondent had no jurisdiction to deal with the matter.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned Order and other material made available on record.

At the outset, I am of the opinion that the petitioner cannot maintain the plea that the 1st respondent-Deputy Registrar of Cooperative Societies has no jurisdiction to deal with the matter. In fact, it is the petitioner, who filed something like a claim petition before him when Execution Proceedings were initiated and the property was sought to be attached and put to sale. As such, she herself having submitted to the jurisdiction of the 1st respondent and invited the judgment, cannot take any objection for the Order being passed by 1st respondent.

Now the only question that needs to be considered is whether the 1st respondent was right in holding that the property held by the petitioner was purchased by her husband in her name and she was only a ‘benamidar’ and hence, the E.P. is maintainable against her properties. Even as per the facts recorded by

the 1st respondent, the properties were purchased in the name of the petitioner in the year 1987 and she is in possession of the same as per the documents. But the 1st respondent proceeded on a negative attitude saying that there is no proof that her parents have given the said sites towards 'pasupu kumkuma'. However, the 1st respondent held that the petitioner stated that she borrowed some amount and executed pronotes also for the purpose of construction of the house, but they are not satisfactory and the petitioner produced an unregistered mortgage deed executed in favour of one Smt.N.Prabhavatamma, W/o Venkata Reddy, but, the same is not valid. Further, he found that the house tax assignment, electricity connection and other bills are in the name of the petitioner only. But, he came to the conclusion that earlier the husband of the petitioner worked in Kondagunta PACS in the year 1990 and thereafter, he was transferred to Pedaparia PACS. Therefore, it is proved that the said Secretary (petitioner's husband) committed misappropriation of funds and misused the official power in Kondagunta PACS also, where he worked earlier. The misappropriated amount, which was mentioned in the surcharge order, indicates that he committed misappropriation at Pedaparia PACS and constructed the houses. Now he says that since the misappropriated period relates to the year 1992 and the house was constructed around that time and unregistered mortgage deed was executed on 29-8-2002, they all clearly show that the documents were not proved that the property was purchased with her own income and held that the said houses were constructed only with the misappropriated amounts.

Be that as it may, absolutely no opportunity was given to the petitioner to file any affidavit or she was asked to produce any evidence in this regard. She has produced the documents along with the claim petition and on the basis of the same, the impugned Order was passed. Assuming that the houses were constructed from the year 1993 onwards, but it is unfortunate to say that the sites were purchased in the year 1987 from the misappropriated amounts of the society. I am of the opinion that a matter of this nature could have been dealt with seriously giving liberty to the petitioner to produce evidence, both oral and documentary, to prove that the purchase under the registered sale deeds was made by her parents and given to her towards 'pasupu kumkuma', but no such opportunity was given to the petitioner. Simply, the 1st respondent jumped to the conclusion that in the absence of any document as to 'pasupu kumkuma' it must be deemed that it was purchased with the misappropriated amounts of Pedaparia PACS. It is an admitted fact that the husband

of the petitioner joined at Pedaparia PACS only in the year 1990, whereas the sale deeds relate to the year 1987. It is also an admitted fact that the marriage of the petitioner took place in the year 1986. She also asserted that she conducted a Convent at Chillakuru in the year 1987 and has been earning Rs.4,000/- to Rs.5,000/- per month. All these things were ignored and no opportunity was given to the petitioner to prove that the property sought to be attached and sold belongs to her and it is not the property devolved on her from her husband or it was purchased from the earnings of her husband, who found to have misappropriated certain amounts of Pedaparia PACS. Till such time, no coercive steps shall be taken against the petitioner.

For all the above reasons, the impugned Order is liable to be set aside and is accordingly set aside. The matter is remitted to the 1st respondent for fresh consideration. Respondent No.1 shall give opportunity to the petitioner to lead both oral and documentary evidence in this regard and only after hearing the petitioner and recording the evidence, if any produced, the matter shall be disposed of afresh.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

13-6-2006

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